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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,685	09/12/2003	Jose Vicente Barbera Alacreu	2644-0105P	7699
2292 7590 07/28/2011 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
NOTIFICATION DATE		DELIVERY MODE		
07/28/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary**Application No.**

10/660,685

Applicant(s)

BARBERA ALACREU, JOSE VICENTE

Examiner

VY BUI

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/5/2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-39 and 41 is/are allowed.
- 6) ☒ Claim(s) 40 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 42 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Brumfield et al-5,562,662 (Brumfield).

As to claim 40, Brumfield (F 2, 3A-3C, 9, 11) discloses a dorsolumbar and lumbosacral vertebral fixation system, comprising:

at least one connector or coupling (numbered as 29 in reproduced F 11 next page);
a rod (numbered as 21 in reproduced F 11 next page);

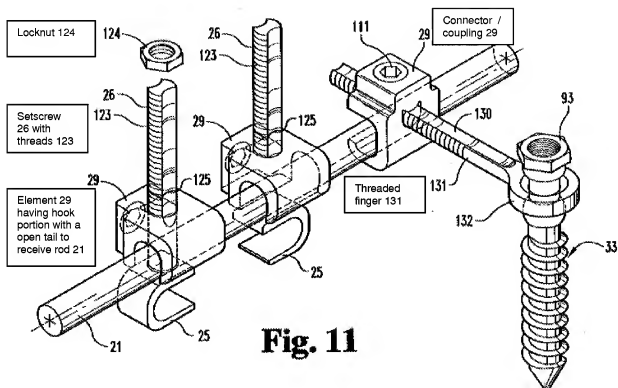
a device for vertebral fixation comprising a hook portion of element 29 (F 9 and 11) adapted to be fixed to the rod 21 by attachment of an open tail 108 (F 9) of the hook directly to the rod, and

a device for vertebral fixation comprising a hook and/or a finger 131 (having thread 123) threadedly adapted to be screwed to coupling or connector 29 to the rod 21,

wherein the devices for vertebral fixation are adapted to be introduced to either a pedicle or vertebral laminae (F 2, 12), and the open tail 108 (F 9, 11) of the device for vertebral fixation is adapted to be attached to the rod 21 and locked into place by setscrew 26 (having thread 123) on the inside of the open tail 108 and a locknut 124 on the outside of the open tail 108 (F 9) substantially as recited in the claim.

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As to claim 42, open tail 108 of the hook portion of element 29 (F 9, 11) has an opening to receive rod 21.

**Fig. 11**

Allowable Subject Matter

Claims 22, 24-39 and 41 are allowed.

Response to Arguments

The finality of the previous office action (paper 1/4/2011) was not premature and proper because claim 42 was newly added after non-final rejection (9/3/2009). However, as requested by the applicant, the finality of the previous office action (paper 1/4/2011) has been withdrawn.

Applicant's arguments with respect to newly added claim 42 after non-final action (9/3/2009) and dependent claim 40 have been considered and are moot in view of the new ground(s) of rejection necessitated by amendment of independent claim 40.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EXAMINER whose telephone number is (571)272-4692 and email address is "vy.bui@uspto.gov". The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, ***please contact the examiner's supervisor, Corrine McDermott, at (571) 272-4754***. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to

TC3700_Workgroup_D_Inquiries@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/

Primary Examiner, Art Unit 3773